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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 340

THOMAS L. OLDFIELD,

Petitioner,

vs.

SS. ARTHUR P. FAIRFIELD, Her Engines, Boilers, Tackle, Apparel and Furniture, and AMERICAN PACIFIC STEAMSHIP COMPANY, a Corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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SS. ARTHUR P. FAIRFIELD, HER ENGINES, BOILERS, TACKLE, APPAREL AND FURNITURE, AND AMERICAN PACIFIC STEAMSHIP COMPANY, A CORPORATION,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Thomas L. Oldfield, seaman, for a writ of certiorari to review a decree of the United States Court of Appeals for the Ninth Circuit, entered on June 22, 1949, affirming a judgment entered July 26, 1948, by the District

Court of the United States for the Western District of Washington, Northern Division, respectfully shows:

Summary Statement of Matter Involved

This petition presents the question of whether or not the rule of maritime law which allows the equitable right of recoupment by a shipowner from the wages of a seaman for misconduct resulting in loss to the shipowner has been abolished in respect to the offenses covered by *Title 46 U.S.C.A. Secs. 701, 702, 705 and 711,* which enumerate the offenses and punishments to which a seaman is subjected.

The United States Court of Appeals for the Ninth Circuit, contrary to the provisions of *Title 46 U.S.C.A. Sec. 701, et seq.,* allowed a retention and forfeiture of wages of the petitioner and further refused even to reconcile the result with the provisions of the Act on the ground that the petitioner had no standing in court because his claim was based on lawlessness and illegality. As a matter of fact the claim of the petitioner is based on a valid claim for wages which the respondents admit were earned but nevertheless seek to retain in part for reimbursement to the respondents for payment of a fine allegedly caused by the misconduct of the petitioner.

The petitioner brought his libel for wages earned aboard the SS. ARTHUR P. FAIRFIELD. The respondents admitted the liability for the wages, but claimed the right to retain the petitioner's wages in payment of a pro rata portion of a fine levied against the ship by custom officials at the Port of Rotterdam. The fine was imposed as a result of finding 126 cartons of undeclared cigarettes secreted about the vessel. Respondents claim that petitioner owned about 20 of the 126 cartons which were found, and that petitioner failed to turn the cigarettes over to the purser for sealing in the slop chest during the ship's stay in port.

The master paid the fine to clear the ship. Petitioner was not tried for smuggling in the Dutch courts. A log entry of the fine and an allocation thereof was made and a copy furnished petitioner. (See *Title 46 U.S.C.A. Sec. 702*). At that time the petitioner denied owning the undeclared cigarettes. When the ship was paid off in Portland, Oregon, the Shipping Commissioner sustained the retention of the pro rata portion of the fine from petitioner's wages.

The District Court, citing for the most part cases decided long before the Act of 1872, decided that the retention of petitioner's wages by respondents was authorized by the ancient maritime rule that a seaman is equitably responsible to the ship for harm to the ship due to his misconduct. The District Court also believed that the retention of petitioner's wages was authorized by Title 46, U. S. C. A. Sec. 701 (7), which allows forfeiture out of wages for wilfully damaging the vessel. The court also believed retention of petitioner's wages was authorized by Title 46, U. S. C. A. Sec. 701 (8) which allows retention of wages in satisfaction of losses to the master for any act of smuggling for which the seaman is convicted. The court did not attempt to construe either of these subsections to show how they applied to the facts in this case.

The Court of Appeals did not attempt to show that the retention of petitioner's wages was authorized by Title 46, U. S. C. A. Sec. 701 (7).

In answer to the contention that Title 46, U. S. C. A. Sec. 701 (8) controlled, the court assumed without defining smuggling, that an act of smuggling had been committed. The court did not attempt to determine whether or not there had been a conviction but cited Title 46, U. S. C. A. Sec. 705 for the proposition that a "conviction" was not necessary. However, the "conviction" required in Title 46, U. S. C. A. Sec. 701 (8) is one of the elements of the offense therein

defined. Some of the offenses set forth in Section 701 for which a forfeiture of wages is provided, could be made subject to criminal proceedings. Section 705 allows in a proceeding for wages the enforcement of a forfeiture even though the offense defined in Section 701 has not been made the subject of any criminal proceeding. But in any case the offense must first be committed. Here no offense has been made out, because there has been no conviction of smuggling, and thus no forfeiture can be enforced.

The main basis for the Court of Appeals' decision was the assumption that unless the maritime law of recoupment for misconduct could be applied in the face of the statute, the owners would be "remediless where the ship was fined as a result of the wilful disobedience by the seaman of the regulations of a foreign country" (R. 97). But the avowed purpose of the Act of 1872, as well as its subsequent construction, indicates the intent of Congress to restrict the ancient right of forfeiture and retention of wages of seamen.

The Court of Appeals stated that it would be possible to reconcile its decision with the provisions of the Act, but the court refused to do so on the grounds that the petitioner had no standing in court because his claim was based upon lawlessness.

The ruling deprived the petitioner, a seaman, of the protection afforded him under the Act to bring a proceeding for the collection of wages, subject only to the forfeitures and fines provided for by the Act. Thus the petitioner suffered an application of the rigorous exactions permitted before the Act, and was deprived of the protection which the Act was intended to afford.

Basis of the Court's Jurisdiction

The jurisdiction of this court is founded upon *Section 240 (a) of the Judicial Code* as amended, *Title 28 U.S.C.A. Sec. 1254 (1).*

The Federal Statute construed by the court below which construction is claimed to be in error, is as follows:

Act of June 7, 1872 (17 Stat. 273), Title 46 U.S.C.A. Secs. 701, 702, 705.

The date of the judgment and decree of the United States Court of Appeals for the Ninth Circuit sought to be reviewed is June 22, 1949.

This petition presents the following special and important reasons for review of the opinion and decree below:

(a) The Court of Appeals has in the decision and decree appealed from, decided an important question of admiralty law which has not been, but should be, settled by the Supreme Court, in order that effect may be given to an Act of Congress passed for the protection and benefit of seamen in their relations with their masters, rather than to the ancient maritime law which the Act was intended to supersede.

(b) The Court of Appeals by its decision has failed to apply an Act of Congress which, even in the words of that court, "was passed to mitigate the intolerable conditions of seamen." The court declared that a claim for wages under *Title 46 U.S.C.A. Sec. 604* to which a defense of forfeiture for misconduct had been interposed was a claim based on essential lawlessness. Such a claim does not merit standing in court nor require the court to construe the statute to determine the justification of the forfeiture. Were this proposition correct then no seaman could ever invoke the Act in order to protect himself from forfeiture of wages when the master alleged misconduct or lawlessness as the basis of the forfeiture.

Opinion of the Court Below

The opinion of the United States Court of Appeals, Ninth Circuit, is dated June 22, 1949. The case on appeal

was heard by Denman, Chief Judge, Bone, Circuit Judge, and Fee, District Judge. On July 18, 1949, and within the time allowed therefor by rule of court, petitioner filed his Petition for Rehearing. The Petition for Rehearing was denied on August 12, 1949. This petition was filed on September 19, 1949.

Questions Presented

The questions presented are:

(a) Whether or not the United States Court of Appeals, Ninth Circuit, erred in holding that the claim of the petitioner for wages was based on essential lawlessness, so as to deprive him of the right to have the court determine his claim in accordance with the provisions of the Act (*Title 46 U.S.C.A. Sec. 701*), which enumerates the offenses of seamen and punishments permitted therefor, including circumstances under which there may be decreed a forfeiture of wages.

(b) Whether or not, in the light of Title 46, U. S. C. A. Secs. 701, 702 and 705 which enumerate the offenses and punishments to which seamen are subjected, the United States Court of Appeals and the District Court erred in holding that under the "general maritime law" and "equitable principles" the owner of a ship is entitled to recoupment for loss suffered due to misconduct of a seaman by forfeiture of wages.

(c) Whether or not the Court of Appeals erred in its application and construction of Title 46, U. S. C. A. Secs. 701, 702 and 705.

Reasons Relied Upon For Allowance of Writ

The United States Court of Appeals for the Ninth Circuit has decided an important question of admiralty law

which has not been but should be settled by this Court. The Court of Appeals has avoided the performance of its plain duty to apply the Act of 1872. It has excused performance of this duty by characterizing petitioner's claim for wages admittedly earned by him as a lawless one merely because the shipowner interposed a defense of misconduct resulting in loss to the ship.

Moreover, the Court of Appeals applied the general maritime rule of equitable recoupment by shipowners from the wages of seamen for misconduct resulting in loss to the shipowner. But the Act of 1872 which enumerates offenses and punishments, including forfeiture of wages, to which seamen may be subjected supersedes this general maritime rule.

Failure to apply this statute, coupled with the application of the prior maritime law, places seamen once more at the mercy of the masters for forfeiture of wages for misconduct, the very evil the Act sought to eliminate.

It is essential that a Writ be granted in order to determine important questions relating to the construction, interpretation and application of the Act of 1872 and specifically to determine whether or not under the admitted facts in this case the shipowner had the right in accordance with the plain terms of the Act to forfeit petitioner's wages.

Prayer

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this Court the transcript of the record in the above entitled Thomas L. Oldfield, Appellant, *vs.* SS Arthur P. Fairfield, her engines, boilers, tackle, apparel and furniture and American Pacific Steamship Company, a corporation, Appel-

lees, No. 12,092, and all the proceedings in said United States Court of Appeals to the end that said cause may be reviewed and determined by this Court and the judgment of the United States District Court for the Western District of Washington, Northern Division, and the judgment of the United States Court of Appeals, Ninth Circuit, be reversed and the case remanded for further proceedings according to law.

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SUPREME COURT OF THE UNITED STATES

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vs.

SS ARTHUR P. FAIRFIELD, HER ENGINES, BOILERS, TACKLE, APPAREL AND FURNITURE, AND AMERICAN PACIFIC STEAMSHIP COMPANY, A CORPORATION,

Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Opinions of the Courts Below

The opinion of the United States Court of Appeals, Ninth Circuit, dated June 22, 1949, has not as yet been officially reported, but is printed in the record (R 95).

The decision of the District Court, dated July 20, 1948, may be found in the record commencing at page 82.

Grounds on Which Jurisdiction of the Supreme Court of the United States Is Invoked

The jurisdiction of this court is founded upon *Section 240 (a) of the Judicial Code,* as amended, *Title 28 U. S. C. A. Sec. 1254 (1).*

The Federal Statute construed by the court below, which construction is claimed to be error, is as follows:

Act of June 7, 1872 (17 Stat. 273), Title 46 U. S. C. A. Sections 701, 702, 705.

The date of the judgment and decree of the United States Court of Appeals for the Ninth Circuit sought to be reviewed is June 22, 1949.

This petition presents the following special and important reasons for review of the opinion and decree below:

(a) The Court of Appeals by its decision has failed to apply an Act of Congress which was specifically passed in 1872 to mitigate the intolerable conditions of seamen. Instead of applying that statute the court has applied an ancient rule of maritime law which permitted the wages of a seaman to be forfeited. It is axiomatic that where Congress speaks to define rights and duties, its action supersedes prior inconsistent rules of law. This is particularly true in the field of maritime law.

(b) The Court of Appeals has, in the decision and decree appealed from, decided an important question of admiralty law which has not been, but should be, settled by the Supreme Court to the end that the Act of Congress passed for the protection and benefit of seamen is applied in their relations with their masters, and to the end that the purpose of the Act is not defeated by unauthorized recourse to the superseded prior maritime law.

Statement of the Case

Petitioner, a seaman, was employed by the respondent on the SS ARTHUR P. FAIRFIELD as a utility man on May 22, 1947, at Los Angeles, California, and continued in the employ of said vessel until October 14, 1947. On or about July 21, 1947, the SS ARTHUR P. FAIRFIELD anchored off the City of Rotterdam, The Netherlands, for cargo discharge at that port

(R. 18). At that time petitioner and other crew members were advised that under the custom laws of the Kingdom of The Netherlands each seaman would be allowed one carton of cigarettes in his possession during the stay of the vessel in the Port of Rotterdam, and petitioner and other seamen were ordered to deliver all excess cartons of cigarettes in their possession to the purser to be placed in the slop chest of the vessel for sealing by Dutch custom officials.

Upon inspection of the vessel by the custom officials of the Kingdom of the Netherlands, some 126 cartons of cigarettes which had been secreted about the vessel were discovered, and a fine was assessed against the vessel. The master paid the fine in order to procure a release of the vessel (R. 19). The petitioner was not convicted by any court of law in connection with said cigarettes (R. 19).

The master thereafter mustered the crew and announced restriction of liberty, privileges, work from bell to bell etc., until the names of the owners of the contraband cigarettes were disclosed. The deck delegate soon produced a list of names, including that of petitioner, and the number of cartons which he said were owned by each.

The master then logged the seamen named on said list and assessed a fine on each in proportion to the fine levied on the vessel and the number of cartons said to be owned by each, and ordered a deduction from their wages. The logging followed the procedure of *Title 46 U.S.C.A. Sec. 702,* each seaman being furnished a copy. Petitioner refused to sign the log and disclaimed his guilt. (R. 20).

When the vessel was paid off in Portland, Oregon, on October 14, 1947, at the end of the voyage, the logging of the petitioner as aforesaid was sustained by the Shipping Commissioner, and respondents were allowed to deduct and retain from his wages the amount of the vessel's fine pro rated to the petitioner.

On October 18, 1947, petitioner filed his libel for wages earned as aforesaid. During trial in the District Court it was admitted by respondents that the wages had been earned (R. 38) and thus the only issue was the validity of the retention of the amount assessed as the pro rata portion of the fine paid by the master of the vessel to the Dutch officials. Petitioner argued that the retention was not in conformity to the requirement of *Title 46 U.S.C.A. Sec. 701,* which sets out the various offenses for which seamen may be punished and the appropriate penalty therefor.

The court upheld respondents' defense of rightful withholding from petitioner's wages. In so deciding the court applied the ancient rule that a seaman is equitably responsible to the ship for harm to the ship due to his misconduct. The court also was of the opinion that the respondents' defense was sanctioned by *Title 46 U.S.C.A. Sec. 701 (7) and (8).*

The Court of Appeals also upheld the respondents' retention of petitioner's wages and based its decision on both the ancient maritime rule of equitable recoupment and *Title 46 U.S.C.A. Sec. 701 (8).* In order to show that there had been a "conviction" as required in *Title 46 U.S.C.A. Sec. 701 (8),* the court referred to *Title 46 U.S.C.A. Sec. 705.* However, the latter section is not applicable to the definition of offenses for which forfeitures are allowed but merely allows in a proceeding for wages a forfeiture as punishment for an offense although the offense has not yet been made the subject of a criminal proceeding. The Court of Appeals laid particular emphasis upon the general maritime rule of equitable recoupment for misconduct, although the offense alleged has been covered by the Act of 1872 (Title 46, U. S. C. A. Sec. 701 (8)). In conclusion the Court of Appeals stated that it would not construe the Act because the claim for wages of the petitioner was based on essential lawlessness. This ruling deprived petitioner of the protection

afforded him under the Act in regard to forfeiture of wages for misconduct.

Specification of Errors

The United States Court of Appeals, Ninth Circuit, erred:

(1) In holding and decreeing that the claim of the petitioner for wages (46 U. S. C. A. Sec. 604) was based on "essential lawlessness" and thus under the maxim "ex turpi contractu actio non oritur" the court would not hear petitioner's claim nor apply the Act (46 U. S. C. A. Sec. 701) which enumerates offenses which subject seamen to forfeiture of wages and other punishments.

(2) In holding and decreeing that the retention of petitioner's wages by respondents was lawful under the general maritime law and equitable principle that the shipowner is entitled to recoupment by forfeiture of wages for loss suffered due to misconduct of the seaman when the offense alleged is covered by 46 U. S. C. A. Sec. 701, which Act enumerates the offenses and punishments to which seamen are subjected.

(3) In not finding and decreeing that the petitioner be allowed his full claim for wages and that any retention or forfeiture made by the respondents is unlawful in that it does not conform with the Act governing such retention (46 U. S. C. A., Secs. 701, 702, 705).

ARGUMENT

Point I

Petitioner's Wage Claim Is Founded On No "Lawlessness"

The petitioner's claim for wages earned under 46 U. S. C. A. Sec. 604 was not based on "essential lawlessness." Thus the statute should have been construed to determine

the validity of the forfeiture of wages of the petitioner by the respondents.

The Court of Appeals in the concluding paragraph of its opinion (R. 98) stated:

> "It is possible to reconcile the result and the provisions of the Act. But we will not pursue such barren dialectics to give color to a claim based on essential lawlessness and cynical contempt for all regulations."

The court has thus applied the maxim "ex turpi contractu actio non oritur"—from an illegal contract no action can arise. But this maxim has no application where the substantive right of a plaintiff does not require him to establish as a part of his case any illegality or lawlessness as the basis of his claim. The claim of the petitioner in the case at bar is for wages, admittedly earned, by a plaintiff wholly devoid of any connotation of illegality or wrong-doing. Therefore, illegality or wrong-doing is no defense when it is injected collaterally and does not go to the foundation of the plaintiff's cause of action. This is taught in the following cases:

In *Loughran* v. *Loughran* (1933), 292 U. S. 216, 228, the court said:

> "The bar applied is not the plea of illegality commonly interposed in suits brought to enforce contracts tainted by illegality. In those suits the illegality relied on is inherent in the cause of action; is directly connected with the relief sought; and constitutes a substantive defense. Here, the relation of the illegality to the relief sought is indirect and remote. The wrong done is a thing of the past and is collateral. By the long line of cases following Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679, it is settled that illegality constitutes no defense when merely collateral to the cause of action sued on. A 'person does not become an outlaw and lose all rights by doing

an illegal act.' National Bank & Loan Co. v. Petrie, 189 U. S. 423, 23 S. Ct. 512, 513, 47 L. Ed. 879."

The Charles E. Wisewall (1895), 74 Fed. 802, involved a libel in rem by certain tug owners against a steam dredge to recover the value of services rendered by the tug in towing the dredges. Owners of the dredge sought to avoid payment for the services on the ground that the tug owners were members of an association which was illegal. The court said:

> "He (the claimant) should not be permitted to repudiate his just debts to the individual tugs because their association was illegal. Having asked for their services, and having accepted the benefit thereof, he should pay. . . . An agreement by the tug Mayflower to tow the dredge Wisewall, for a reasonable sum, from Albany to Troy, is not void because the Mayflower is associated with other tugs to regulate the price of towing at Albany" (p. 436).

So, too, in the case at bar it follows that the mere fact that the petitioner may have violated the regulations of a foreign government does not place him in such an illegal status so as to deprive him of his right to assert his just claim for wages due for services rendered. Respondents here admitted the wages were earned and due, but sought as a part of their case to justify retention of a part thereof because of an alleged offense against The Netherlands custom regulations.

Point II

As Here Involved 46 U.S.C.A. Sec. 701 Defines the Instances Where There May Be a Recoupment From a Seaman's Wages

Prior to the passage of the Act of 1872 (Title 46 U. S. C. A. Sec. 701) which enumerates the offenses and punish-

ments to which seamen are subjected, many abuses existed in withholding seamen's pay for their misconduct, debts, or for other reasons. Many different kinds of deductions were upheld by the courts under the general maritime law.

However, since the passage of the Act the withholding of wages of seamen has been strictly regulated by the statute.

The case of *Shilman* v. *U. S.* (CCA-2), 164 F. (2d) 649, Cert. Den. 68 S. Ct. 608, involved a libel for a seaman for wages. The defense interposed was that the seaman owed a sum as a fine levied because of the seaman's taking an adding machine ashore at Tunisia, North Africa. This set-off was disallowed. At page 650 the court said:

> "It seems clear from the statute applicable to seamen's wages that the United States cannot lawfully withhold any part of a seaman's wages because of such a fine as was imposed upon libelant in the case at bar."

At pages 650, 651, after quoting certain sections of the law pertaining to seamen's wages, the court further observed:

> "The above sections look toward payment to the seaman by his employer at the termination of the employment of all of his earned wages, without any deductions except those which are expressly authorized by statute."

The court further laid down the rule that the statutes should be "liberally interpreted with a view of effecting the protection intended to be extended."

The *Shilman* case is relied upon by the Court of Appeals (R. 97) as an authority supporting its conclusion. In making the quotation from the decision the court apparently overlooked the conclusion of the court denying the set-off and that there was a parallel between a case where a seaman had breached his Articles by deserting and thus required the hiring of a substitute and the case at bar where recoupment is sought because of a fine levied collaterally

against the ship. The case at bar is clearly governed by the express provisions of 46 U. S. C. A. Sec. 701. The smuggling case referred to in the quotation occurred many years before the enactment of Section 701.

We thus see that the conclusion of the Court of Appeals arose from a misapprehension of the true scope of the *Shilman* case and from the confusion in the authorities in failing clearly to demark the changes wrought by the Act of 1872 in the preexisting law. For instance, there can be no challenge of the proposition that the smuggling case of *Scott* v. *Russell,* D. C. S. D. N. Y., Fed. Cas. No. 12,546, is now controlled by Title 46 U. S. C. A. Sec. 701 (8). This, we submit, is a timely occasion for this honorable court to resolve these conflicts in its decisions and to define the protection which the Act of 1872 was designed to extend to seamen in relation to retention by their masters of their wages.

The court felt impelled to its conclusion by the thought that if Section 701 was given controlling effect, the result would be to leave the shipowner remediless. There are several answers to this suggestion; first, the matter of the extent to which remedies in maritime law shall be afforded the master is a question for the legislative discretion of the Congress to define, and second, subdivision (4) permitting retention for violation of the order to place cigarettes in the slop chest did afford the employer some remedy, and we submit all the remedy that Congress intended the master to have.

Point III

Title 46 U.S.C.A. Section 701 Governs and Does Not Authorize Retention From Wages on the Facts Here Shown

The respondents in their answer plead the right to retain part of the wages of petitioner because of a fine paid for

violation of a Netherlands custom regulation with respect to declaring cigarettes. The petitioner and members of the crew were told to surrender all cigarettes except one carton in order that the same might be locked in the slop chest. It is probable that the respondents could, had they seen fit, have secured the retention from the wages of petitioner to the extent authorized by Section 701 (4) for failing to obey this order. However, the basis for retention was placed upon the alleged violation of Section 701 (8) which requires (a), an act of smuggling; (b), a conviction therefor, and (c), loss to the master or owner of the ship because of smuggling.

Smuggling has a definite legal meaning:

United States v. *Clafflin,* 13 Blatchf. 178, 184;
Keck v. *U. S.,* 172 U. S. 434, 446, 19 S. Ct. 254.

Congress had in 1942 enacted Section 2865 Revised Statutes defining the crime of smuggling and as taught by the above cases the term has a strictly technical meaning, the elements of which are not present in the circumstances claimed by the respondents in the case at bar. Therefore, there was no act of smuggling.

The Court of Appeals gave no effect whatsoever to the words "for which he is convicted" appearing in Section 701 (8) and held in effect that Section 705 relating to enforcement of forfeitures permitted the trial court considering the question concerning the forfeiture of the seaman's wages to convict the seaman of smuggling. The Act should not be so construed. Many of the offenses set forth in Section 701 relate to misconduct which could well be the subject matter of a criminal proceeding, and Section 705 was obviously intended to allow a forfeiture of wages in those cases. Where the Congress as a part of the misconduct specifically provided that the seaman must be convicted, a criminal proceeding was made a condition precedent to the

forfeiture. The offense justifying the forfeiture does not exist until there has been a conviction. The right to make the forfeiture must exist at the time the forfeiture is made by the Master. The Court of Appeals in its opinion drew away from the logical conclusion that there could be no retention of wages because the act here claimed did not disclose the elements necessary to the crime of smuggling by saying the court did not think the purpose of the statute was to leave the owner "remediless where the ship was fined as a result of a wilful disobedience of a seaman of the regulations of a foreign country" (R. 97). We have before noted the shipowner was afforded a remedy by Section 701 (4) for failure to obey the orders to turn in the cigarettes. We submit that the extent of the remedy to be afforded the shipowner is a legislative question resting with Congress and that it has not seen fit to lay the seaman open to multiple claims for retention of wages and has seen fit in Section 701 to prescribe the instances where in the discharge of his duties, and particularly aboard the ship, the seaman may suffer a retention from his wages for his acts.

Conclusion

It is, therefore, respectfully submitted that the Court of Appeals has by its decision decided an important question of admiralty law arising under the Act of June 7, 1872, in a manner contrary to the express terms of the Act and the purposes for which it was enacted; that said decision has deprived the petitioner of the protection afforded him by said Act against unauthorized forfeiture of wages.

If the opinion of the Court of Appeals is allowed to stand the effect of the Act of 1872 as a limitation upon forfeiture of wages of seamen for offenses coming within the language of the provisions of Section 701 will be greatly multiplied and the Act in effect will be repealed by judicial construction. We submit that the questions presented in this petition are

of extreme importance and are of wide application to seamen; that uncertainty exists in the decisions as to the scope and effect of the Act and a Writ of Certiorari should be granted by this honorable court to review the record and settle the questions presented thereby.

Respectfully submitted,

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Attorney for Petitioner.

(4386)